

The Orissa Gazette

EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 1578, CUTTACK, TUESDAY, SEPTEMBER 27, 2005/ ASWINA 5, 1927

LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 29th August 2005

No. 7334-II/1 (B)-97/91(Pt)/LE.— In pursuance of section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award dated the 12th August 2005 in I.D. Case No. 40/1992 of the Presiding Officer, Labour Court, Bhubaneswar to whom the industrial disputes between the Management of Mechanical P.H. Division No.I, Suryanagar, Bhubaneswar and its workman Sk. Allauddin was referred for adjudication is hereby published as in the scheduled below:—

SCHEDULE

IN THE LABOUR COURT, BHUBANESWAR

INDUSTRIAL DISPUTE CASE No. 40 OF 1992

Dated the 12th August 2005

Present:

Shri P.K. Sahoo, O.S.J.S. (Junior Branch),
Presiding Officer,
Labour Court,
Bhubaneswar.

Between:

The Executive Engineer,
Mechanical P.H. Division No.I,
137-A, Surya Nagar,
Bhubaneswar.

. . First party—Management

And

Sk. Allauddin
C/o. Shri Suresh Chandra Nanda,
Plot No. 1692, Baramunda Colony,
Unit-8, Infront of Government
Boys High School, Bhubaneswar.

. . Second party—Workman

Appearances:

None

. . For first party—Management

Sk. Allauddin

. . Second party workman himself

AWARD

The State Government in exercise of powers conferred by sub-section (5) of section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No.4631(4)/LE., dated the 31st March 1992 for adjudication and Award.

2. The terms of reference may briefly be stated as follows:

“Whether the termination of services of Sk. Allauddin, Ex-NMR Compressor Operator by the Executive Engineer, P.H. Mechanical Division No.1, Bhubaneswar with effect from 2-8-1988 is legal and/or justified? If not, to what relief he is entitled?”

3. By way of this reference workman Sk. Allauddin has challenged the legality and justifiability of the action of the Executive Engineer, P.H. Mechanical Division No.1, Bhubaneswar (in short the Management) in terminating his services with effect from 2-8-1988.

The brief facts giving rise to the present reference are that the workman was engaged in the establishment of the Management in the year 1989 as N.M.R. In course of his employment he had discharged his duties with much sincerity, devotion and to the best satisfaction of the authorities of the Management. Although he had rendered continuous uninterrupted service with effect from March, 1981 till the date of his termination but the Management without any rhyme or reason terminated him from service with effect from 2-8-1988 without complying with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). According to the workman due to illness of his mother he had applied for leave for her treatment from 5-6-1988 to 1-8-1988. When he reported for duty on 2-8-1988 he was refused employment. Despite his approach as no fruitful result was forthcoming he approached the labour machinery but to no effect and ultimately the matter was referred to this Court for adjudication. While seeking industrial adjudication, the workman has prayed for his reinstatement in service with back wages along with other service benefits.

4. The Management, on the other hand, entered its appearance and filed written statement opposing the claim of the workman. During the pendency of hearing the Management did not take any effective steps to contest the proceeding as a result, it was set *ex parte*. The *ex parte* hearing commenced on 2-5-2001 and 22-9-2001.

5. During *ex parte* evidence the workman has clearly supported the facts averred in his statement of claim. In his evidence he has stated that he was deputed to work at Berhampur and in fact he had worked there for eight years. From Berhampur he was deputed to Baripada and while working at Baripada he went on leave due to illness of his mother with prior permission of the Assistant Engineer, Baripada. When he reported for duty on his joining he was refused employment. Despite his approach the Management did not consider his case and he was refused employment for which he raised the present dispute. Accordingly he has now claimed for his reinstatement in service with full back wages. W.W.2 has clearly supported and corroborated the evidence of the workman with regard to his continuous service under the Management and the refusal of employment by it.

6. The Management although filed its written statement but did not contest the proceeding at latter stage. The evidence already led by the workman has not been challenged by the Management in any manner in the evidence. The Management has neither examined any witness in support of its case nor preferred to cross-examine the evidence already adduced by the workman. In absence of any rebuttal evidence absolutely I find no cogent reason to disbelieve the evidence already led by the workman in the present case. On scrutiny of evidence it is abundantly clear that the workman had rendered continuous uninterrupted service with effect from March, 1981 till the date of his termination on 2.8.1988. But the Management without any rhyme or reason terminated

his service without giving any notice or notice pay and retrenchment compensation which, in my view, are in complete violation of the mandatory provisions of section 25-F of the Act. Under Industrial Law the provisions of section 25-F of the Act is mandatory and any violation thereof will render the retrenchment void *ab initio*. The above such fact has been decided in catena of decisions. In the case at hand, the Management terminated the services of the workman without following the mandate of section 25-F of the Act and therefore, the terminating having been made in violation of the mandatory provisions of section 25-F of the Act, is in my view, void *ab initio*. After carefully examined the evidence on record. I am of the view that the action of the Management in terminating the services of the workman with effect from 2-8-1988 was illegal, unjustified and against the mandate of section 25-F of the Act. In that view of the matter, the workman is entitled to the relief of reinstatement.

7.Hence it is ordered :

That the termination of services of Sk. Allauddin, Ex-NMR Compressor Operator by the Executive Engineer, P.H. Mechanical Division No.I, Bhubaneswar with effect from 2-8-1988 is neither legal nor justified. The workman is entitled to be reinstated in service with a lump sum compensation of Rs.5000 (Rupees five thousands) only towards back wages.

The reference is thus answered accordingly *ex-parte*.

Dictated and corrected by me.

P.K. SAHOO
12-8-2005
Presiding Officer,
Labour Court,
Bhubaneswar.

P.K. SAHOO
12-8-2005
Presiding Officer,
Labour Court,
Bhubaneswar.

By order of the Governor

D.MISHRA
Under-Secretary to Government